SANITARY LEGISLATION.

COURT DECISIONS.

MAINE SUPREME JUDICIAL COURT.

Meat—Inspection of—Municipal Ordinance Held Constitutional.

STATE v. STARKEY, 90 Atl. Rep., 431. May 8, 1914.

The public health is at the foundation of the public good, and individual convenience and profit must be enjoyed in proper subjection to and observance of the laws affecting the public health.

Ordinances enacted by a municipality must be reasonable, but a regulation which is instituted for the purpose of preventing injury to the public, and which does tend to furnish the desired protection, is constitutional.

Municipalities have the power to regulate the slaughtering of animals and to require the inspection of carcasses when the meat is to be sold, such inspection being a necessary incident to the execution of health laws.

HANSON, J. This is a complaint for a violation of an ordinance of the town of Houlton, and comes before the court on report.

The material parts of the record are as follows:

On September 29, 1912, the board of health of the town of Houlton adopted the following rule or regulation:

"Carcasses of neat cattle, sheep, or swine, wherever slaughtered, shall not be sold or offered for sale in the town of Houlton unless they have been inspected at the time of slaughter by an official inspector and bear the stamp of approval of said inspector in like manner as those inspected by the United States Bureau of Animal Industry for interstate trade."

On the 21st day of December, 1912, the respondent, by virtue of complaint made by A. B. Smart, was arrested for violation of this ordinance, and a hearing was held before the judge of the Houlton municipal court on said date. Upon hearing, the respondent pleaded not guilty, was adjudged guilty by said court, and was sentenced to pay a fine of $10 and costs, from which sentence he appealed to the supreme judicial court, and the appeal was properly pending in the April term, 1913.

It is admitted that this rule was promulgated in accordance with the provisions of the statute.

This case is reported to the law court for determination of the questions whether the rule or regulation above promulgated is reasonable and constitutional.

If the decision is for the State, judgment of the lower court is to be affirmed.

The respondent contends that the "ordinance is unreasonable and illegal, because it is against ancient custom, is indefinite, and does not provide for the payment of the inspection called for in the same; that it interferes with the rights of private property and the freedom of the people to trade with one another."

The attorney for the State contends that it is a proper exercise of the police power of the State as delegated by the statute.

The constitution of the State (art. 4, p. 3, sec. 1) provides that the legislature shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of the State.

The legislature (in R. S., chap. 4, sec. 93, cl. 3), has provided that towns, cities, and village corporations may make and enforce ordinances "respecting infectious diseases and health."

Salutary laws relating to contagious diseases, and the enforcement of proper restraints in relation thereto, have been passed from time to time, the wisdom of which can not be questioned. In such cases, as in the case at bar, individual convenience and profit must be enjoyed in proper subjection to and observance of the laws affecting the public health, which is at the foundation of the public good. These laws affect the commonwealth, are of the highest importance, and the necessity for additional safeguards has increased with increasing population and the many new agencies and methods of distributing meats and other articles of food to the consumer. The subject has engaged the attention of all legislative bodies, State and national, and the end sought justifies a continual active interest in this essential element of the public good.

The right to pass inspection laws belongs to the police power of the government. (Cooley's Const. Lim., 1st ed., 584, 585.) Inspections are necessary incidents to the execution of quarantine and health laws, and laws to prevent fraud, imposition, and extortion in quality and quantity in sales, and the power to provide for them has been uniformly recognized as the subject of delegation to municipal corporations. (Id.; Sedgwick on Stat. and Const. Law, 463; 22 Cyc., 1364; 19 Cyc., 1090.)

A statute providing for inspection of kerosene and other oils, to prohibit the sale of such as ignite below a certain degree of heat, is a plain and reasonable exercise of the police power of the State. (Patterson *v.* Kentucky, 97 U. S., 501; 24 L. Ed., 1115.) So would be any law, providing for the inspection of fresh meat, and other provisions, in order that the public welfare may be protected from danger, arising from the consumption of unwholesome food. (Tiedeman, Lim. of Police Power, sec. 89.)

It is true, as contended by the respondent, that all by-laws made in restraint of trade, or which tend to create a monopoly, are void, but a city or town, by reasonable general provisions, by ordinance, may regulate and restrain all noxious and injurious callings within its limits, and that they may prevent animals from being slaughtered in designated localities within the city, and may designate a particular quarter of the city or town within which the business may be conducted, and prohibit it in others, and regulate and restrain them so as to prevent their becoming offensive or injurious, but in doing so all persons should be free to engage in the business within those localities by conforming to the municipal regulations. (Chicago *v.* Rumpff, 45 Ill., 90; 92 Am. Dec., 196.)

A municipality has power to enact reasonable ordinances only, and that the court will annul ordinances which are unreasonable, illegal, or repugnant to law is a doctrine uniformly sustained. (Jones *v.* Stanford, 66 Me., 585; State *v.* Robb, 100 Me., 180; 60 Atl., 874; 4 Ann. Cas. 275.) And any regulation, whatsoever its character, which is instituted for the purpose of preventing injury to the public, and which does tend to furnish the desired protection, is clearly constitutional. (Tiedeman's Lim. of Police Power, sec. 89; Lake View *v.* Rose Hill Cemetery Co., 70 Ill., 191; 22 Am. Rep., 71; Cooley's Const. Lim., sec. 200.)

That the expense of inspection is not provided for is raised as an objection to the validity of the ordinance, and People *v.* Harper (91 Ill., 357) is cited as sustaining the objection, but that case expressly holds that the officers in respect to whom the Constitution speaks of fees and salaries fixed by law are only those specifically named in that instrument, and do not embrace officers appointed under the inspection laws of the State.

That no fee is required or provided for is in favor of the respondent. So long as an inspection fee is not so much in excess of what appears to be reasonably required for inspection as to make it appear to be an act designed for revenue instead of regulation, it presents no legal question. (22 Cyc., 1365, note 7.)

Statutes in relation to inspection of articles intended for sale as food have been enacted as occasion required since the formation of our Government. Laws requiring inspection of flour, beef, pork, butter, lard, and fish are of this class. The obvious purpose of the ordinances under consideration was to prevent the sale and use of meats unfit for consumption, and to protect the people against deception. Such provision is not only within the legislative right, but is an imperative legislative duty.

The police power of the State is coextensive with self-protection and is not inaptly termed "the law of overruling necessity." It is that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society. (Lake View *v.* Rose Hill Cemetery, 70 Ill., 191; 22 Am. Rep., 71, supra; Commonwealth *v.* Wheeler, 205 Mass., 384; 91 N. E., 415; Pittsburg & Southern Coal Co. *v.* Louisiana, 156 U. S., 590, 599; 15 Sup. Ct., 459; 39 L. Ed., 544.)

The regulation of the place and manner of conducting the slaughtering of animals, and the business of butchering within a city, and the inspection of animals to be killed for meat, and of the meat afterwards are among the most necessary and frequent exercises of this power. (Slaughter-House Cases, 16 Wall., 36; 21 L. Ed., 394.)

It is the opinion of the court that the ordinance is a valid police regulation and the entry must be

Judgment affirmed.

NEBRASKA SUPREME COURT.

A Physician Acting Under the Direction of the State Board of Health in an Epidemic is Entitled to Compensation.

SHIDLER *v.* YORK COUNTY, 146 N. W. Rep. 949. April 3, 1914.

Under the laws of Nebraska a physician who, by direction of the State board of health, incurs expense and renders professional services in an epidemic is entitled to reimbursement of the amount expended and compensation for his services, which must be paid by the county.

The fact that the physician is a member of the county board of health does not affect the rule stated above.

BARNES, J. In the summer and fall of 1909 there was a large number of cases of what is commonly called "infantile paralysis" in York County, Nebr. Dr. George P. Shidler, a duly licensed physician, was at that time a member of the board of health in that county, but he was not the county physician, and was under no contract with, and received no salary from, the county, as a member of its board of health or otherwise. The disease in question was of a most serious nature, and was fatal in many cases. The pathology of the disease was not then very well understood, but, by reason of its prevalence and character, many of the communities in the stricken territory were thrown into a condition approaching panic. Trade suffered, public schools remained closed after the usual time for them to begin the fall term, dates of chautauquas and other public assemblies were canceled, and notably among those communities was the city of York in that county. Mr. John L. Dorsey, the then chairman of the county board of health, expressed himself as opposed to a quarantine, and failed and refused to call a meeting of the county board of health, or to take any other measures relative to the disease, or to the investigation or control of it; and no meeting was had by said board of health, and no action whatever was taken by it at any time during the entire year that Dr. Shidler was a member.

On July 20, 1909, the State board of health, acting under its power, on information of the condition of affairs in York County, and by reason of the authority contained in section 2738, Revised Statutes, 1913, met and made an order that said disease be quarantined in York County, and by its order instructed the State health inspector to communicate its order to Dr. Shidler, and to require him to establish and maintain a rigid quarantine of said disease throughout that county. The order was communicated to Dr. Shidler, and in obedience to it, and to the command of the inspector to "get busy," he proceeded to quarantine said disease wherever he